

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

GRADY O. HUMPHREYS, et al

Plaintiff,

ASBESTOS DEFENDANTS:

**A.O. SMITH ELECTRICAL PRODUCTS
COMPANY, ET AL.**

Defendants.

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**CIVIL ACTION NO.
2:07CV-607-WKW**

**MOTION TO DISMISS AND/OR FOR MORE DEFINITE STATEMENT AND/OR
MOTION FOR SEVERANCE AND/OR NOTICE OF JOINDER IN MOTION TO
DISMISS FILED BY KELLY-MOORE PAINT COMPANY INC.**

COMES NOW the defendant Thiem Corporation, individually and as successor by merger to Universal Refractories Corporation (hereafter "Thiem"), and pursuant to Rules 12(b)(3), (6) and/or 12(e) and Rule 20 of the Federal Rules of Civil Procedure, moves the Court to enter an order dismissing the Complaint against it and/or in the alternative, to enter an order directing the plaintiffs to replead the vague and ambiguous allegations asserted against it in the complaint in a manner that complies with Rule 8(a) of the Federal Rules of Civil Procedure and/or to sever the individual plaintiff's claims into separate actions. In support of this motion, Thiem shows unto the Court as follows:

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Complaint is barred by the applicable statute of limitations.
3. The Complaint is barred by res judicata and/or collateral estoppel principles.
4. Venue is improper in this Court.
5. Plaintiffs' claims do not include common questions of law or fact and their joinder together is improper.

6. The Complaint fails to meet the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure inasmuch as the Complaint is devoid of any specific allegations of wrongdoing levied against Thiem at any specific point in time. Accordingly, the Complaint as presently pled, is so vague and ambiguous that the defendant "cannot reasonably be required to frame a responsive pleading." Rule 12(e) of the Federal Rules of Civil Procedure.

7. In further support of its motion, the defendant adopts and incorporates herein Kelly-Moore Paint Company, Inc.'s Motion to Dismiss in its entirety.

WHEREFORE, PREMISES CONSIDERED, Thiem moves the Court to enter an order dismissing the Complaint against it and/or alternatively to enter an order directing the plaintiff to replead the Complaint with specific factual allegations which would put this defendant on notice of the wrongdoing alleged against it, and the time and place at which said alleged wrongdoing occurred and/or to sever the individual plaintiff's claims into separate actions.

s/Allan R. Wheeler
C. PAUL CAVENDER (ASB8784-E67C)
ALLAN R. WHEELER (ASB4726-R49A)
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CERTIFICATE OF SERVICE

I hereby certify on this 27th day of August 2007 that the foregoing **MOTION TO DISMISS AND/OR FOR MORE DEFINITE STATEMENT AND/OR MOTION FOR SEVERANCE AND/OR NOTICE OF JOINDER IN MOTION TO DISMISS FILED BY KELLY-MOORE PAINT COMPANY INC.** " has been filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record in this case.

s/Allan R. Wheeler

OF COUNSEL